

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

COBALT MULTIFAMILY INVESTORS I, LLC,  
COBALT MULTIFAMILY CO. I, LLC, COBALT CAPITAL  
FUNDING, LLC, MARK A. SHAPIRO,  
IRVING J. STITSKY, AND WILLIAM B. FOSTER,

Defendants,

-and-

VAIL MOUNTAIN TRUST,

Relief Defendant.

06 Civ. 2360 (KMW) (MHD)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Judgment Creditor,

-against-

COBALT MULTIFAMILY INVESTORS I, LLC, COBALT  
MULTIFAMILY CO. I, LLC, AND COBALT CAPITAL  
FUNDING, LLC,

Defendants-Judgment Debtors,

-and-

FMF, LLC AND BANK OF AMERICA, N.A.,

Respondents.

DECLARATION OF NANCY A. BROWN  
IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER  
DIRECTING BANK OF AMERICA, N.A., AND FMF, LLC, TO TURN OVER CERTAIN  
FUNDS TO THE PLAINTIFF-JUDGMENT CREDITOR FOR DISTRIBUTION TO  
DEFRAUDED INVESTORS AND CREDITORS

I, Nancy A. Brown, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am admitted to practice before the Courts of the State of New York and before this Court, and am employed as Senior Trial Counsel in the Division of Enforcement of the Securities and Exchange Commission (“Commission”). I submit this Declaration in support of the Commission’s motion for an order directing Bank of America, N.A. (“BofA”), and FMF, LLC (“FMF”) to turn over certain funds deposited in an FMF account at BofA.

2. Appended hereto as Exhibit A is a true and correct copy of a schedule prepared by the court-appointed Fund Administrator, detailing the monies collected to date by the Receiver for distribution to investors and creditors. It was previously submitted to the Court as Exhibit A to the Declaration of Jason Rabe, executed August 3, 2015 (DE 369).

3. Appended hereto as Exhibit B is a true and correct copy of the Affidavit of Marisa Bilog, a BofA Assistant Vice President, sworn to August 19, 2016, and submitted in the state court proceeding initiated by Defendant Irving Stitsky, captioned “FMF, LLC and Irving Stitsky v. Bank of America, N.A., Index No. 653675/2016 (N.Y. Sup. Ct.) (“State Court Action”).

4. Appended hereto as Exhibit C is a true and correct copy of a May 1, 2017 letter from BofA to the Commission, identifying the funds remaining in the FMF, LLC account at BofA (the “FMF Account”).

5. Appended hereto as Exhibit D are true and correct copies of excerpts from the hearing in this case held on the Commission’s Application for a Preliminary Injunction on May 4, 2006.

6. Appended hereto as Exhibit E is a true and correct copy of the Notice of Motion for Summary Judgment in Lieu of Complaint, filed July 13, 2016 by counsel for FMF, LLC and Stitsky in the State Court Action.


7. Appended hereto as Exhibit F is a true and correct copy of the Affidavit of Irving Stitsky, sworn to May 5, 2016, and submitted in support of Plaintiffs' Motion for Summary Judgment in the State Court Action.

8. Appended hereto as Exhibit G is a true and correct copy of the Affirmation of Leonard Weintraub, executed August 25, 2016, and submitted in opposition to Plaintiffs' Motion for Summary Judgment in the State Court Action.

9. Appended hereto as Exhibit H is a true and correct copy of the Notice of Voluntary Discontinuance, dated March 9, 2017, and submitted by Plaintiffs in the State Court Action.

I declare under penalties of perjury that the foregoing is true and correct.

Executed on May 8, 2017  
New York, New York

  
\_\_\_\_\_  
Nancy A. Brown